(2009) 04 DEL CK 0068

In the Delhi High Court

Case No : CM (M) 822 of 2007 and CM 8204 of 2007

Krishan Lal APPELLANT

Vs

Meet Finance Company RESPONDENT

Date of Decision : 21-04-2009

Acts Referred:

Citation : (2009) 159 DLT 507 : (2009) ILR Delhi 520 Supp : (2010) 7 RCR(Civil) 262

Hon'ble Judges : Manmohan, J

Bench : Single Bench

Advocate : V.K. Tandon, for the Appellant; R.S. Sahni, for the Respondent

Judgement

Manmohan, J.—Present petition has been filed under Article 227 of Constitution of India challenging the order dated 30th November, 2005 passed by ADJ by virtue of which petitioner''s appeal under Order 41 CPC against judgment dated 23rd October, 2004 passed by Civil Judge was dismissed. It is pertinent to mention that Civil Judge vide said order had dismissed petitioner''s suit being No. M-49/2002.

2. Briefly stated the relevant facts of this case are that on 10th August, 1983 petitioner/plaintiff purchased a three wheeler scooter (hereinafter referred to as "vehicle") bearing registration No. DHR-6761 for a total consideration of Rs. 15,000/-. While petitioner/plaintiff himself paid a sum of Rs. 5,000/-, balance amount of Rs. 10,000/- was given as loan by respondent/defendant finance company. The said loan of Rs. 10,000/- was to be repaid in twenty-four equal monthly installments of Rs. 616/-.

3. In July, 1985 petitioner met with an accident and according to Mr. Tandon, learned Counsel for petitioner, petitioner was bed ridden till October 1985.

4. According to petitioner, on 26th November, 1985, respondent/defendant without giving any prior notice, forcibly took possession from petitioner/plaintiff of said vehicle near about Satyam Cinema, Near Patel Nagar Police Station.

Petitioner/plaintiff on 26th November, 1985 itself filed a complaint with the police. By that time, petitioner/plaintiff had repaid eighteen installments, totalling Rs. 10,251/-.

5. On 20th May, 1987, petitioner/plaintiff filed a suit for damages and mandatory injunction i.e. for restoration of said vehicle as well as damages @ Rs. 30/- per day amounting to Rs. 16,170/- and for further damages till the vehicle was restored.

6. Petitioner/plaintiff also filed a petition u/s 20 of Arbitration Act, 1940 on the basis of agreement for hire purchase. The matter was referred to Arbitrator and petitioner/ plaintiff''s suit was adjourned sine die with liberty to revive the same. Though Arbitrator rendered an Award against the petitioner but for technical reasons, Award was not made Rule of the Court. Consequently, petitioner/ plaintiff revived his suit. However, trial court dismissed petitioner/plaintiff''s application under Order XXXIII CPC to sue as an indigent person. The trial court directed petitioner/plaintiff to pay court fees. Even petitioner/plaintiff''s appeal against the said order was dismissed. Subsequently, petitioner/plaintiff paid court fees only on the relief for recovery of damages that means for Rs. 16,170/- but did not pay court fees for prayer B i.e. for mandatory injunction seeking restoration of vehicle. On 13th July, 1998, petitioner/plaintiff withdrew the relief of mandatory injunction that means prayer seeking restoration of vehicle.

7. On pleading of the parties, the trial court framed the following issues :- i) Whether suit is barred by time? OPD. ii) Whether plaintiff is entitled to damages, if so, at what rate ?OPP iii) Relief.

8. Though trial court held petitioner/plaintiff''s suit to be within limitation, it did not grant any damages on the ground that petitioner/plaintiff had failed to prove the same. The relevant reasoning of trial court on all issues is reproduced hereinbelow for ready reference:

ISSUE No. 1

...since no specific article has been provided in the Limitation Act, therefore, the same is covered by Article 113 of the Limitation Act which provides the limitation of three years. Hence, the present suit is within limitation and has been filed within three years from accrual of cause of action which arose on 26/11/1985 and the suit has been filed on 20/05/1987. Hence, this issue is decided against the defendant and in favour of plaintiff.

ISSUE No. 2

...DW-1 has stated that their sales agent namely Sh. Kulwant Singh who is their guarantor has repossessed the vehicle in question and thereafter, handed it over to them. It is pertinent to mention here that in the plaint it is mentioned that after the vehicle in question was repossessed by the defendant, the plaintiff hired another three wheeler scooter from one Sh. Satpal, to whom he was paying Rs. 30/- per day. The plaintiff has failed to examine the said person namely Sh.

Satpal to prove the quantum of damages claimed in the present suit, and Sh. Satpal was necessary to be examined to prove that the plaintiff was incurring the damages of Rs. 30/- per day as he was paying the same to him. Moreover, the plaintiff himself was at default and the vehicle was repossessed in terms of the agreement and also the plaintiff has stated in his evidence that he was unable to earn anything after the vehicle was repossessed till the date of filing the suit and he was not plying any other vehicle. The evidence and the pleadings are contrary inasmuch as at least para 11 of the plaint is concerned. Hence, the aspect of damages remains not proved. Accordingly, this issue is decided against the plaintiff and in favour of the defendant.

ISSUE No. 3 RELIEF -

In view of the findings given on issue No. 2 above, the plaintiff has failed to prove his case and accordingly he is not entitled to any relief and, hence, the present suit is hereby dismissed with no order as to cost.

9. Petitioner/plaintiff''s appeal was also dismissed by Appellate Court for the following reasons:

10. I have gone through the material available on the record and the findings of the Trial Court. The perusal of the record shows that the plaintiff had executed the hire purchase documents and the receipt also and under the agreement the defendant/ respondent had right to take away the vehicle. So the such act of the respondent / defendant does not give any right and entitlement of the plaintiff to have the damages. I do not find any infirmity in the judgment of the Trial Court. Consequently, the findings of the Trial Court on all the issues, the judgment and the decree of the Trial Court is upheld. The appeal is dismissed as devoid of merit....

10. Petitioner/plaintiff thereafter filed a Regular Second Appeal but a learned Single Judge of this Court was pleased to dismiss the appeal as not maintainable on the ground that subject matter of suit was for a recovery of an amount not exceeding Rs. 25,000/. The order of learned Single Judge dated 2nd May, 2007 is reproduced hereinbelow for ready reference :

Heard counsel for the parties.

Since the original suit was filed before the trial court for recovery of Rs. 16,170/-, this case is clearly barred u/s 102 CPC, wherein it is mentioned that no second appeal shall lie from any decree, when the subject matter of the original suit is for recovery of money not exceeding twenty-five thousand rupees. It was also pointed out that relief of mandatory injunction was given up subsequently.

In view of this position, counsel for the appellant submits that he will seek remedy somewhere else.

RSA No. 172/2006 is accordingly dismissed.

11. Subsequently, petitioner/plaintiff filed present petition under Article 227 of

the Constitution.

12. Mr. V.K. Tandon, learned Counsel for petitioner/plaintiff submitted that as respondent/defendant had forcibly taken possession of said vehicle despite petitioner/plaintiff having paid a sum of Rs. 10,251/- against a loan of Rs. 10,000/- and despite having paid 18 out of 24 installments, petitioner/plaintiff was entitled to compensation. In this context, Mr. Tandon relied upon a judgment of National Consumer Disputes Redressal Commission in case of Citicorp Maruti Finance Ltd. v. S. Vijayalaxmi reported in 3 (2007) CPJ 161, wherein it has been held as under:

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3. Legal or judicial process may be slow but it is no excuse for employing musclemen to repossess the vehicle for which loan is given. Such type of "instant justice'' cannot be permitted in a civilized society where there is effective rule of law. Otherwise, it would result in anarchy that too when the borrower retorts and uses the force....

xxxxxxx xxxxxxxx xxxxxxxx 32.......But, if the agreement is executed under the premises that the financier is the owner of the vehicle, such agreement is totally on the basis of misrepresentation/misunderstanding of facts and law and such contract would be void as provided u/s 20 of the Indian Contract Act, 1872. The said Section specifically provides that where both the parties to an agreement are under a mistake as to a matter of fact essential to the contract, the agreement is void.

xxxxxxx xxxxxxxx xxxxxxxx 49. Considering the fact that the District Forum had already directed payment of Rs. 1,50,000/- with interest at the rate of 9% p.a. from the date of filing of the complaint and Rs. 5,000/- as compensation, in our view, it is not necessary to impose punitive damages. Hence, the order passed by the State Commission directing the petitioner to pay Rs. 50,000/- as punitive damages to the Complainant, is set aside. However, we make it clear that Petitioner shall not be entitled to recover any amount from the Complainant on the basis that some amount remains unpaid in their books of accounts. If any ante-dated cheques are remaining with the Petitioner, the same shall be treated as null and void and no action on that basis shall be taken by the Petitioner against the Complainant.

13. Mr. R.S. Sahni, learned Counsel for respondent/defendant firstly submitted that petitioner/plaintiff''s suit was barred by limitation. According to Mr. Sahni, in accordance with Articles 28 and 29 of Limitation Act, a suit for recovery of damages on account of illegal seizure had to be filed within a period of one year -- which had not been done in the present case. He further contended that as the admitted position was that said vehicle had not been seized by respondent/defendant company but the same had been repossessed by one Mr. Kulwant Singh, who was not a party to the suit, petitioner/plaintiff was not entitled to recover any damages from respondent/defendant company. He also contended

that as petitioner/plaintiff had abandoned his claim for restoration of vehicle vide order dated 13th July, 1998, relief for recovery of damages till the vehicle was restored and/or for grant of future damages could not be granted. He lastly submitted that petitioner/plaintiff had failed to lead any evidence to prove his claim for damages and further as respondent/defendant company was the owner of said vehicle, it could not be asked to pay damages for taking possession of its own vehicle.

14. As far as the first defence of limitation is concerned, I am of the view that trial court has rightly observed that the present suit for recovery of damages and mandatory injunction, would be governed by Article 113 of the Limitation Act, which provides limitation of three years. Consequently, petitioner/plaintiff''s suit was certainly within limitation.

15. As far as said vehicle having been repossessed by one Mr. Kulwant Singh is concerned, I am of the view that since he is admittedly a sales agent of respondent/defendant company, the Court will have to proceed on the basis that said vehicle was repossessed by respondent/defendant itself. However, the fact that petitioner/plaintiff did not lead any evidence with regard to damages and further gave up his mandatory injunction relief for restoration of vehicle would clearly show that petitioner/plaintiff is not entitled to either repossession of its vehicle or for future damages/compensation.

16. But the admitted position that emerges is that petitioner/plaintiff was dispossessed by force of the said vehicle by respondent/defendant company and that too, without any prior notice. This action of respondent/defendant is clearly impermissible and amounts to taking law in its own hand. In fact, Hon''ble Supreme Court in case of Manager, ICICI Bank Ltd. Vs. Prakash Kaur and Others, has deprecated the practice adopted by banks of taking forcible possession of vehicles by hiring recovery agents. The relevant observations of the Apex Court in above case are reproduced below:

16. Before we part with this matter, we wish to make it clear that we do not appreciate the procedure adopted by the Bank in removing the vehicle from the possession of the writ petitioner. The practice of hiring recovery agents, who are musclemen, is deprecated and needs to be discouraged. The Bank should resort to procedure recognized by law to take possession of vehicles in cases where the borrower may have committed default in payment of the instalments instead of taking resort to strong arm tactics.

xxxxxxxx xxxxxxxxx xxxxxxx 28. In conclusion, we say that we are governed by a rule of law in the country. The recovery of loans or seizure of vehicles could be done only through legal means. The Banks cannot employ goondas to take possession by force.

17. Moreover, in my opinion, the judgment of Citicorp (supra) referred to by Mr. Tandon is clearly applicable to facts of the present case.

18. Consequently, in my view as respondent/defendant company has unlawfully and by way of an unethical procedure taken forcible possession of petitioner/ plaintiff''s vehicle, they are liable to pay him a compensation of Rs. 16,000/- with simple interest at the rate of 6% per annum from the date of repossession of said vehicle i.e. from 26th November, 1985 till the date of payment. Respondent/ defendant is directed to make payment of aforesaid amount within a period of six weeks from today. With the aforesaid directions, present petition and pending application are disposed of. Lower court record be sent back immediately.